UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-- x

ALEJANDRO TREJO,

Plaintiff,

-against-

The CITY OF NEW YORK, NEW YORK CITY DETECTIVES MATTHEW REGINA and JOHN DOES 1-3, in their individual and official capacities,

Defendants.

-- x

ANSWER ON BEHALF OF DEFENDANTS CITY OF NEW YORK AND DETECTIVE MATTHEW REGINA TO COMPLAINT

17 CV 960 (LAK)

JURY TRIAL DEMANDED

Defendants City of New York ("City") and Detective Matthew Regina ("Detective Regina") (collectively "Defendants"), by their attorney, Zachary W. Carter, Corporation Counsel of the City of New York, for their answer to the Complaint, respectfully allege, upon information and belief, as follows:

1. Deny the allegations set forth in paragraph "1" of the Complaint.

2. Deny the allegations set forth in paragraph "2" of the Complaint, except admit that plaintiff purports to invoke the Court's jurisdiction as stated therein.

3. Deny the allegations set forth in paragraph "3" of the Complaint, except admit that plaintiff purports to invoke the Court's supplemental jurisdiction as stated therein.

4. Deny the allegations set forth in paragraph "4" of the Complaint, except admit that plaintiff purports to base venue as stated therein.

5. No response is required for paragraph "5" of the Complaint as it is not an averment of fact but a request for a jury trial.

6. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "6" of the Complaint, except admit that Detective Regina is employed by the NYPD.

7. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "7" of the Complaint, except admit that on March 25, 2016, Detective Regina was a member of Narcotics Borough Manhattan South.

8. The allegations set forth in paragraph "8" of the Complaint state legal conclusions which requires no response, to the extent a response is required, deny.

9. Deny the allegations set forth in paragraph "9" of the Complaint, except admit the City maintains the New York Police Department ("NYPD") and respectfully refers the Court to the New York City Charter and Administrative Code for a recitation of the relationship between the City and NYPD.

10. Deny the allegations set forth in the paragraph "10" of the Complaint, except admit that the Comptroller received a document from plaintiff purporting to be a Notice of Claim on July 7, 2016.

11. Deny the allegations set forth in the paragraph "11" of the Complaint.

12. Deny the allegations set forth in the paragraph "12" of the Complaint.

13. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "13" of the Complaint.

14. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "14" of the Complaint.

15. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "15" of the Complaint.

16. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "16" of the Complaint.

17. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "17" of the Complaint.

18. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "18" of the Complaint.

19. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "19" of the Complaint.

20. Deny the allegations set forth in paragraph "20" of the Complaint.

21. Deny the allegations set forth in paragraph "21" of the Complaint.

22. Deny the allegations set forth in paragraph "22" of the Complaint, except admit that plaintiff was detained by Detective Regina.

23. Admit the allegations set forth in paragraph "23" of the Complaint.

24. Deny the allegations set forth in paragraph "24" of the Complaint, except admit that a bag of marijuana was found on the plaintiff.

25. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "25" of the Complaint.

26. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "26" of the Complaint.

27. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "27" of the Complaint.

28. Deny the allegations set forth in paragraph "28" of the Complaint, except admit plaintiff was arrested on March 25, 2016.

29. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "29" of the Complaint.

30. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "30" of the Complaint.

31. Deny the allegations set forth in paragraph "31" of the Complaint.

32. Deny the allegations set forth in paragraph "32" of the Complaint.

33. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "33" of the Complaint.

34. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "34" of the Complaint.

35. Deny the allegations set forth in paragraph "35" of the Complaint.

36. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "36" of the Complaint.

37. Deny the allegations set forth in paragraph "37" of the Complaint, except admit that plaintiff was charged with Criminal Sale of marijuana in the Fourth Degree (PL 221.40) and Unlawful Possession of marijuana (PL 221.05)

38. Deny the allegations set forth in paragraph "38" of the Complaint, except admit that Detective Regina did prepare the Criminal Court Complaint dated March 26, 2016.

39. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "39" of the Complaint.

40. Admit the allegations set forth in paragraph "40" of the Complaint.

41. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "41" of the Complaint.

42. Admit the allegations set forth in paragraph "42" of the Complaint.

43. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "43" of the Complaint.

44. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "44" of the Complaint.

45. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "45" of the Complaint.

46. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "46" of the Complaint.

47. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "47" of the Complaint.

48. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "48" of the Complaint.

49. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "49" of the Complaint.

50. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "50" of the Complaint.

51. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "51" of the Complaint.

52. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "52" of the Complaint.

53. Admit the allegations set forth in paragraph "53" of the Complaint.

54. Admit the allegations set forth in paragraph "54" of the Complaint.

55. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "55" of the Complaint.

56. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "56" of the Complaint.

57. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "57" of the Complaint.

58. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "58" of the Complaint.

59. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "59" of the Complaint.

60. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "60" of the Complaint.

61. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "61" of the Complaint.

62. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "62" of the Complaint.

63. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "63" of the Complaint.

64. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "64" of the Complaint.

65. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "65" of the Complaint.

66. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "66" of the Complaint.

67. Deny the allegations set forth in paragraph "67" of the Complaint.

68. Deny the allegations set forth in paragraph "68" of the Complaint.

69. Deny the allegations set forth in paragraph "69" of the Complaint.

70. Deny the allegations set forth in paragraph "70" of the Complaint.

71. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "71" of the Complaint.

72. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "72" of the Complaint.

73. Deny the allegations set forth in paragraph "73" of the Complaint.

74. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "74" of the Complaint.

75. Deny the allegations set forth in paragraph "75" of the Complaint and refer the Court to the referenced Annual Reports for an accurate recitation of their findings.

76. Deny the allegations set forth in paragraph "76" of the Complaint and refer the Court to the referenced NYPD Patrol Guide Section for an accurate recitation of its contents.

77. Deny the allegations set forth in paragraph "77" of the Complaint and refer the Court to the referenced Annual Report for an accurate recitation of its contents.

78. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "78" of the Complaint.

79. Deny the allegations set forth in paragraph "79" of the Complaint.

80. Deny the allegations set forth in paragraph "80" of the Complaint.

81. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "81" of the Complaint.

82. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "82" of the Complaint.

83. Deny the allegations set forth in paragraph "83" of the Complaint and refer the Court to the referenced Annual Reports for an accurate recitation of their findings.

84. Deny the allegations set forth in paragraph "84" of the Complaint and refer the Court to the referenced Annual Reports for an accurate recitation of their findings.

85. Deny the allegations set forth in paragraph "85" of the Complaint.

86. Deny the allegations set forth in paragraph "86" of the Complaint and refer the Court to the referenced Annual Reports for an accurate recitation of their findings.

87. Deny the allegations set forth in paragraph "87" of the Complaint.

88. Deny the allegations set forth in paragraph "88" of the Complaint.

89. Deny the allegations set forth in paragraph "89" of the Complaint.

90. Deny the allegations set forth in paragraph "90" of the Complaint.

91. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "91" of the Complaint.

92. Deny the allegations set forth in paragraph "92" of the Complaint.

93. Deny the allegations set forth in paragraph "93" of the Complaint.

94. Deny the allegations set forth in paragraph "94" of the Complaint.

95. Deny the allegations set forth in paragraph "95" of the Complaint.

96. Deny the allegations set forth in paragraph "96" of the Complaint.

97. Deny the allegations set forth in paragraph "97" of the Complaint.

98. Deny the allegations set forth in paragraph "98" of the Complaint and refer the Court to the referenced Annual Reports for an accurate recitation of their findings.

99. Deny the allegations set forth in paragraph "99" of the Complaint.

100. Deny the allegations set forth in paragraph "100" of the Complaint.

101. Deny the allegations set forth in paragraph "101" of the Complaint.

102. Deny the allegations set forth in paragraph "102" of the Complaint and its subparts.

103. In response to the allegations set forth in paragraph "103" of the Complaint, defendants repeat and reallege the responses set forth in the foregoing paragraphs.

104. Deny the allegations set forth in paragraph "104" of the Complaint.

105. Deny the allegations set forth in paragraph "105" of the Complaint.

106. Deny the allegations set forth in paragraph "106" of the Complaint.

107. Deny the allegations set forth in paragraph "107" of the Complaint.

108. In response to the allegations set forth in paragraph "108" of the Complaint, defendants repeat and reallege the responses set forth in the foregoing paragraphs.

109. Deny the allegations set forth in paragraph "109" of the Complaint.

110. Deny the allegations set forth in paragraph "110" of the Complaint.

111. Deny the allegations set forth in paragraph "111" of the Complaint.

112. In response to the allegations set forth in paragraph "112" of the Complaint, defendants repeat and reallege the responses set forth in the foregoing paragraphs.

113. Deny the allegations set forth in paragraph "113" of the Complaint.

114. Deny the allegations set forth in paragraph "114" of the Complaint.

115. Deny the allegations set forth in paragraph "115" of the Complaint.

116. In response to the allegations set forth in paragraph "116" of the Complaint, defendants repeat and reallege the responses set forth in the foregoing paragraphs.

117. Deny the allegations set forth in paragraph "117" of the Complaint.

118. Deny the allegations set forth in paragraph "118" of the Complaint.

119. Deny the allegations set forth in paragraph "119" of the Complaint.

120. Deny the allegations set forth in paragraph "120" of the Complaint.

121. In response to the allegations set forth in paragraph "121" of the Complaint, defendants repeat and reallege the responses set forth in the foregoing paragraphs.

122. Deny the allegations set forth in paragraph "122" of the Complaint.

123. Deny the allegations set forth in paragraph "123" of the Complaint.

124. Deny the allegations set forth in paragraph "124" of the Complaint.

125. In response to the allegations set forth in paragraph "125" of the Complaint, defendants repeat and reallege the responses set forth in the foregoing paragraphs.

126. Deny the allegations set forth in paragraph "126" of the Complaint.

127. Deny the allegations set forth in paragraph "127" of the Complaint.

128. Deny the allegations set forth in paragraph "128" of the Complaint.

129. In response to the allegations set forth in paragraph "129" of the Complaint, defendants repeat and reallege the responses set forth in the foregoing paragraphs.

130. Deny the allegations set forth in paragraph "130" of the Complaint.

131. Deny the allegations set forth in paragraph "131" of the Complaint.

132. Deny the allegations set forth in paragraph "132" of the Complaint.

133. In response to the allegations set forth in paragraph "133" of the Complaint, defendants repeat and reallege the responses set forth in the foregoing paragraphs.

134. Deny the allegations set forth in paragraph "134" of the Complaint.

135. Deny the allegations set forth in paragraph "135" of the Complaint.

136. In response to the allegations set forth in paragraph "136" of the Complaint, defendants repeat and reallege the responses set forth in the foregoing paragraphs.

137. Deny the allegations set forth in paragraph "137" of the Complaint.

138. Deny the allegations set forth in paragraph "138" of the Complaint.

139. In response to the allegations set forth in paragraph "139" of the Complaint, defendants repeat and reallege the responses set forth in the foregoing paragraphs.

140. Deny the allegations set forth in paragraph "140" of the Complaint.

141. Deny the allegations set forth in paragraph "141" of the Complaint.

142. In response to the allegations set forth in paragraph "142" of the Complaint, defendants repeat and reallege the responses set forth in the foregoing paragraphs.

143. Admit the allegations set forth in paragraph "143" of the Complaint.

144. Deny the allegations set forth in paragraph "144" of the Complaint.

145. Deny the allegations set forth in paragraph "145" of the Complaint.

146. In response to the allegations set forth in paragraph "146" of the Complaint, defendants repeat and reallege the responses set forth in the foregoing paragraphs.

147. Deny the allegations set forth in paragraph "147" of the Complaint.

148. Deny the allegations set forth in paragraph "148" of the Complaint.

149. Deny the allegations set forth in paragraph "149" of the Complaint.

150. Deny the allegations set forth in paragraph "150" of the Complaint.

151. Deny the allegations set forth in paragraph "151" of the Complaint.

152. In response to the allegations set forth in paragraph "152" of the Complaint, defendants repeat and reallege the responses set forth in the foregoing paragraphs.

153. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "153" of the Complaint.

154. The allegations set forth in paragraph "154" of the Complaint state legal conclusions which require no response.

155. Deny the allegations set forth in paragraph "155" of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

156. The Complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

157. Defendants have not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, nor have they violated any act of Congress providing for the protection of civil rights.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE:

158. At all times relevant to the acts alleged in the complaint, defendants, and their agents and officials, acted reasonably in the proper and lawful exercise of their discretion. As a result, defendants are entitled to governmental immunity.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:

159. Any injury alleged to have been sustained resulted from plaintiff's own culpable or negligent conduct, or the culpable or negligent conduct of a third party, and was not the proximate result of any acts of defendants.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:

160. To the extent plaintiff alleges state law claims, he may have failed to comply with N.Y. GEN. MUN. LAW §§ 50-e, 50-h, and 50-i.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:

161. Plaintiff provoked any incident.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:

162. Plaintiff cannot obtain punitive damages as against defendant City.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE:

163. Plaintiff's claims may be barred, in whole or in part, because he may have failed to comply with conditions precedent to suit.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE:

164. Plaintiff's claims may be barred, in whole or in part, by the applicable limitations period.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE:

165. Plaintiff may have failed to mitigate his damages.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE:

166. This action may be barred, in whole or in part, by the doctrines of res judicata and/or collateral estoppel.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE:

167. Defendant Detective Regina has not violated any clearly established constitutional or statutory right of which a reasonable person would have known and therefore is protected by qualified immunity.

WHEREFORE, defendants City of New York and Detective Regina request judgment dismissing the complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
May 5, 2017

ZACHARY W. CARTER
Corporation Counsel of the
City of New York
Attorney for Defendants City and Regina
100 Church Street
New York, New York 10007
(212) 356-2657

By: ______________________
JOSEPH ZANGRILLI
Assistant Corporation Counsel
Special Federal Litigation Division

To: VIA ECF
Cyrus Joubin, Esq.